

# Voting Rights of Prisoners

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Insights  
Editor

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*Topics Covered:* Salient features of the Representation of People's Act.

*What to study?*

*For Prelims: Who can and who cannot cast their votes?*

*For Mains: Should undertrials and convicts be allowed to vote- arguments 'For' and 'Against'.*

**Context:** The Delhi High Court has rejected a petition seeking voting rights for prisoners.

## ***Observations made by the Court:***

1. The right to cast vote is neither a fundamental right nor a common law right and is **only provided by a statute.**
2. The right to vote provided under the statute — **Representation of the People Act** — was **subject to restrictions imposed by the law**, which does not allow prisoners to cast vote from jails.

## ***Who can vote and who cannot?***

Under **Section 62(5) of the Representation of the People Act, 1951**, individuals in lawful custody of the police and those serving a sentence of imprisonment after conviction cannot vote. Undertrial prisoners are also excluded from participating in elections even if their names are on electoral rolls.

***Only those under preventive detention can cast their vote through postal ballots.***

## ***Why undertrials should be given voting rights?***

1. The present voting ban is criticised on the ground that **it makes no offence-based or sentence-based classification** — that is, prisoners are debarred from voting irrespective of the gravity of the offence they have committed, or the length of their sentence. It also makes **no distinction between convicted prisoners, undertrials, and those in lawful police custody.**
2. Besides, **a person is innocent until proven guilty by law.** Despite this, it denies an undertrial the right to vote but allows a detainee the same.

3. The provision also violates ***the rights to equality, vote (Article 326) and is arbitrary. It is not a reasonable restriction.***

### ***Need of the hour:***

Undertrials should be allowed to vote. This is because there are many people, awaiting trial, who have spent more time in prison than the actual term their alleged crime merits. Their numbers are much bigger than convicts.

### ***Stats:***

The 'Prison Statistics India, 2014' published by the National Crime Records Bureau, says there were 2,82,879 undertrials and 1,31,517 convicts lodged across 1,387 prisons in the country as on December 31, 2014.

### ***Global practice:***

1. In Europe, Switzerland, Finland, Norway, Denmark, Ireland, the Baltic States, and Spain already allow prisoner voting.
2. Countries like Romania, Iceland, the Netherlands, Slovakia, Luxembourg, Cyprus and Germany have opted for a middle path: Voting is allowed subject to certain permits and conditions such as the quantum of sentence served.
3. They are only disenfranchised as an added penalty based on the gravity of the crime. Bulgaria allows for anyone sentenced to less than a decade to vote. In Australia, the limit is five years.

*Sources: the hindu.*

